

KDPH JANUARY 2013
TOBACCO COORDINATORS' CALL

SMOKE-FREE BULLITT: ONE STEP CLOSER!

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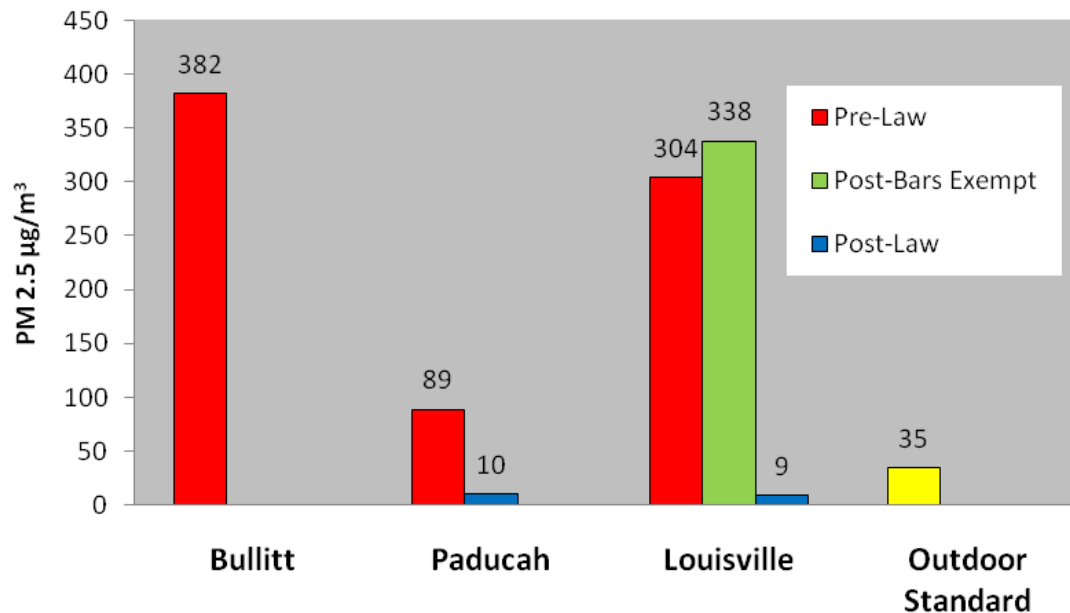
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BUILDING DEMAND: AIR QUALITY STUDY



- Indoor Air Quality Press Event 8/20/10
 - 10.9 times higher than the NAAQS for outdoor air.
 - 42 X higher than Louisville post comprehensive law



The National Ambient Air Quality Standard for PM 2.5 $\mu\text{g}/\text{m}^3$ for 24 hours.
There is currently no indoor air quality standard.

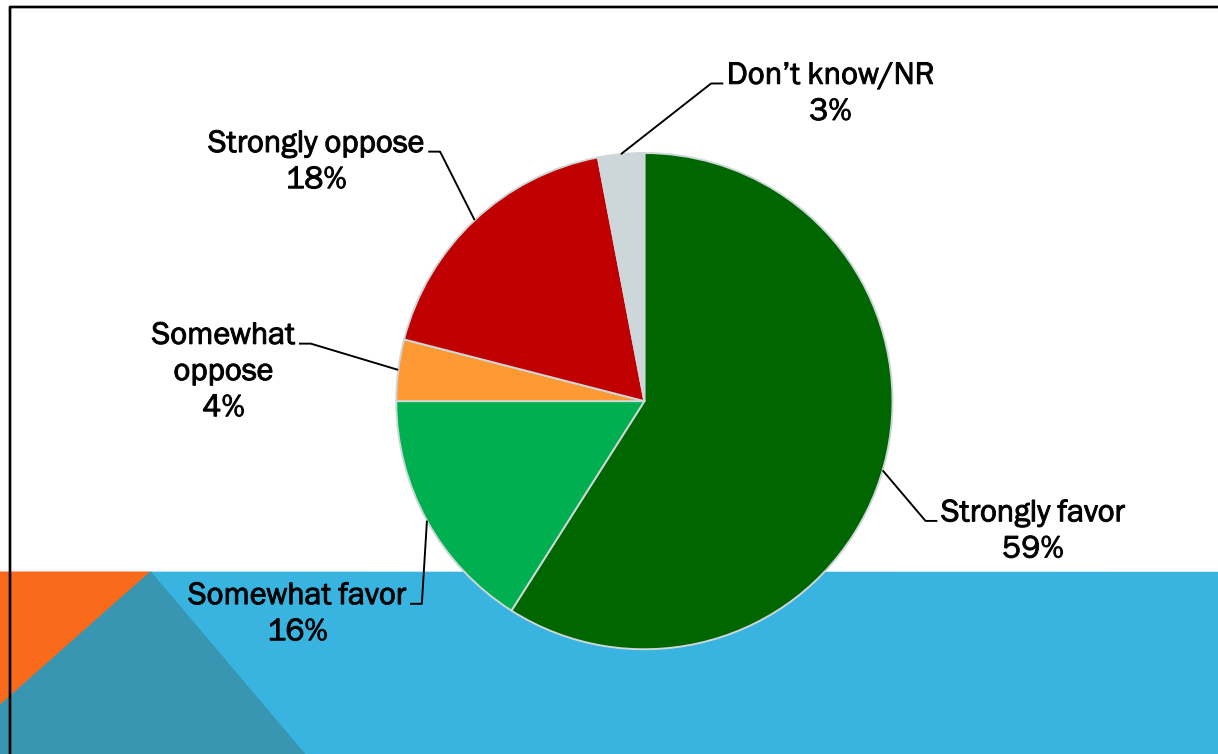
BUILDING CAPACITY & DEMAND: PUBLIC FORUMS

- **Public Forums, 9/20/10 - 11/4/10**
 - Lebanon Junction (south)
 - Mt. Washington (east)
 - Brooks (north)
 - Shepherdsville (central)



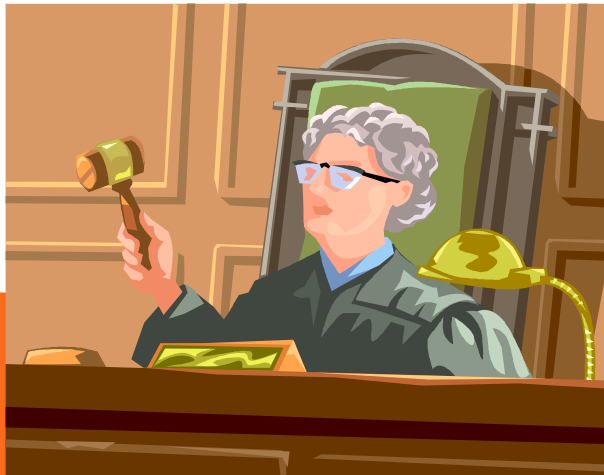
BUILDING DEMAND: PUBLIC OPINION POLL

- Poll conducted Nov-Dec 2010 (HorizonInsight)
- $\frac{3}{4}$ favored S-F in public buildings



OPPOSITION IN CITY/COUNTY GOVERNMENT

- Fiscal Court met 3/1/11 with 5 of 8 city mayors in attendance
- County Attorney discussed possibility of county working with cities to challenge the authority of the BOH to adopt a SF regulation.



....County attorneys serve as counsel to their counties' fiscal courts, districts, commissions, boards, and county officials in all legal issues.

<http://www.kycountyattorneys.org/faq.php>

OPPOSITION BY FRONT GROUP

Bullitt County Choice copies NKY Choice and Green Circle Tactic

“Any business which allows indoor smoking would have to have a sign posted on each and every entrance to the building, and exterior doors would have to have the sign made visible to anyone passing-by, and remain unobstructed...”




Rebuttal:

Signage does not protect employees!

<http://www.bullittcountychoice.com>

BULLITT COUNTY BOARD OF HEALTH ADOPTS SMOKE-FREE REGULATION (7-2), MARCH 22, 2011

- **3/15/11:** First reading of comprehensive workplace reg
 - **3/22/11:** Bullitt Co Fiscal *Court* and all 8 cities petition Judge Rodney Burress in Bullitt Circuit Court for *Declaration of Rights* that the “...*Bullitt Co BOH regulation is void and unlawful and be permanently enjoined from adopting, implementing or enforcing same.*”
 - **9/19/11:** Scheduled implementation date
- 

FEDERAL COMPLAINT ALSO FILED

4/6/11: Bullitt Choice and local businesses file federal complaint in U.S. District Court asking Judge Charles R. Simpson for *Declaratory Judgment and Rights* on 9 issues.

Complaint reportedly “put on hold” until Circuit Court case resolved.



KENTUCKY CIRCUIT COURT CASE

8/25/11 Hearing on Circuit Court Case

9/15/11 Judge's order states that the BOH Regulation is *void and unlawful and that the BOH is permanently enjoined from implementing or enforcing it.*

9/26/11 BOH voted 4-2 to appeal Circuit Court ruling.

2/12 BOH files appeal brief



APPEALS COURT ACCEPTS AMICUS BRIEFS

2/24/12: Appeals Court permitted filing of amicus curiae briefs by:

- Clark, Madison, and Woodford County Boards of Health (re legal authority)
- National and state health-related organizations (re health aspects)



APPEALS COURT MAJORITY OPINION: 12/7/12

“Resolution of issues ...entail determination of:

- 1)Whether Bullitt BOH has the authority to promulgate regulations...involving public health*
- 2) Whether exposure to SHS is a health issue, and*
- 3) Whether the adopted ordinances are reasonable.*

The answer to all questions is ‘yes’ and the circuit court’s decision was erroneous.”

APPEALS COURT OPINION: JUDGE TAYLOR'S DISSENT

- Inherent ambiguity in KRS 212.230(1)c.
 - If courts permit “*overly broad interpretation ...BOH’s regulatory power would be limitless*” (noting examples such as gun control and regulation of alcohol & fast food).
 - Judicial role is to focus on “*legislative intent at the time KRS 212.230(1)c was enacted*” and Taylor doubts that the 1954 General Assembly “*intended to empower health departments to regulate smoking as a threat to public health.*”

AS OF JANUARY 9, 2013....

- Bullitt County Fiscal Court has approved an appeal to the KY Supreme Court and should file their “Motion for Discretionary Review” within 30 days of Appeals Court ruling on December 7, 2012 (deadline 1/7/13).
- Once filed, BOH will respond with a short (15 pp.) brief within 30 days.
- It could take 8-9 months until court decides whether or not to grant discretionary review.
- If the Supreme Court takes the case, it will take another year to have oral arguments and up to an additional 6 mos. for a ruling.



Workers are still unprotected in Bullitt County almost 2 years after a smoke-free regulation was passed by the courageous BOH.

IMPLICATIONS FOR BOH REGULATIONS

- Bullitt County Board of Health cannot enforce their smoke-free regulation until the Circuit Court lifts the injunction.
- Existing BOH regulations (Madison, Clark, Woodford) continue
- If KY Supreme Court decides to hear the Bullitt County BOH case, other BOHs should consider pros and cons of adopting smoke-free regulations.
 - Be sure to use the most updated model language, best practices, and local data.
- Local governments (city commissions or councils and county fiscal courts) have jurisdiction to enact smoke-free ordinances

IMPLICATIONS FOR STATE CAMPAIGN

- 2013 KY General Assembly will again consider a comprehensive smoke-free workplace bill (Sponsor: Rep. Susan Westrom)
 - Comprehensive
 - Anti-preemptive
- **Join Smoke-free Kentucky**
- www.SmokefreeKY.org
- Ask at least five organizations to sign Resolution to support state law
- Work with your media to educate the public about secondhand smoke and smoke-free policy
- Come to Lobby Day at the Capitol, 2/14/13

FOR MORE INFORMATION, CONTACT
Kentucky Center for Smoke-free Policy

www.kcsp.uky.edu

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